THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on :20.02.2007

WP(C) No.11843/2006

SMT SHYAMA MALHOTRA & Ors ...Petitioners

- versus -

UNION OF INDIA & ORS ...Respondents

Advocates who appeared in this case:

For the Petitioners : Mr P.V. Kapoor, Sr Advocate with Mr S.K. Bhaduri.
For the Respondent/UOI : Mr Suresh Kait with Mr Yogesh Verma.
For the Intervenor : Mr Manu Mridul.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in Digest? YES

BADAR DURREZ AHMED, J (ORAL)

1. In this petition, the petitioner No.1 is the mother of the petitioner No.2. The petitioner No.1 is a retired Government servant. The petitioner No.2 is currently a Government servant and is serving as a senior officer in the Indian Police Service. The question involved in the present petition is with regard to the reimbursement of medical expenditure incurred on account of the medical treatment provided to the petitioner No.1.

2. The petitioner No.1 underwent surgical intervention at the Nephrology Department of Batra Hospital during 25.5.2005 to 18.8.2005. At that point of time, the petitioner No.1 was a retired public servant having been an employee of the Central Government till 31.10.1985. The petitioner No.1 did not have a CGHS card in her own name but her name was included in petitioner No. 2's card as a dependent.

3. The petitioner No.2 submitted the claim for the medical treatment provided to the petitioner No.1 as indicated above. The claim was allowed in part. The total amount allegedly spent on the treatment was Rs.14,22,820/- but only a sum of Rs.10,06,666/- was reimbursed to the petitioner No.2. Subsequently, some objections were raised on account of the petitioner No.1 being a pensioner and receiving the benefits in excess of Rs.1500/- per month and yet being shown as a dependent. It was objected that she was not entitled to reimbursement as a dependent of her son (petitioner No.2). As a result of this objection, the petitioner No.2 returned the entire amount i.e., Rs 10,06,666/- to the respondent without prejudice to the claim of the petitioners. Thereafter, the petitioner No.1, on 20.03.2006, was issued a CGHS Card bearing No. 86433 in her own name. Having got the CGHS Card, the petitioner No.1 applied for reimbursement of the entire amount of Rs.14,22,820/-. That application was rejected by a letter dated 26.06.2006 issued by the CMO, CGHS on the ground that the treatment period was

25.5.2005 to 18.8.2005 whereas the CGHS token card was issued much later on 20.03.2006 i.e., after the treatment. Accordingly, the medical reimbursement claim was held to be not reimbursable as per the CGHS Rules.

4. Being aggrieved by this rejection, the present petition has been filed. The prayers in the present petition so much as are relevant are as under:-

> "a. Issue a Writ of Mandamus and/or an appropriate Writ, order or direction in the nature of Mandamus, directing the Respondents to reimburse petitioner No.2, the expense incurred by him for the medical treatment of petitioner No.1, under the CGHS card bearing no. 562928 issued in the name of petitioner No.2, within such time as may be fixed by this Hon'ble Court;
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> b. Strictly in the alternative in the unlikely event that prayer (a) is not granted in favour of the petitioner then, Issue a Writ of Certiorari and/or an appropriate Writ, order or direction in the nature of Certiorari quashing the letter dated 22nd June 2006 (Annexure I) issued by respondent No.3 refusing to refund the expenses incurred for the treatment of petitioner No.1; and Issue a Writ of Mandamus and/or an appropriate writ, order or direction in the nature of Mandamus, directing the Respondents to reimburse to petitioner No.1, the expenses incurred for her medical treatment, under the CGHS card bearing No. 86433 issued in the name of petitioner No.1, within such time as may be fixed by this Hon'ble Court;
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> c. Declare that, that part of Clause 12 of CGHS Guidelines which requires a Government Servant to give a certificate that the income of the parent, who is mainly dependent on him and residing with him, does not exceed Rs.1,500/- per month; and is inconsistent with and seeks to limit the benefit given by Clause 1 of the said Guidelines is violative of Article 21 of the Constitution of India and therefore unconstitutional;

d. Writ of Certiorari and/or an appropriate Writ, order or direction in the nature of Certiorari quashing that part of Clause 12 of the CGHS guidelines, which is unconstitutional."

5. It was contended on behalf of the learned counsel for the petitioners that insofar as the prayers `c' and `d' are concerned, he would not be pressing for the same in the present writ petition and would like to reserve his right to raise the issue, should the need arise, later. Insofar as the prayer `a' is concerned, it requires the court to issue a direction to the respondent to reimburse the petitioner No.2 for the medical expenses incurred on the treatment of the petitioner No.1 under the CGHS card bearing No.562928 issued in the name of the petitioner No.2. Insofar as this prayer is concerned, the learned counsel for the petitioners submits that he would not be pressing this prayer at this stage and he may not be required to press the prayer at all in case the alternative prayer is granted and the case of the petitioner No.1 for reimbursement is disposed of by the authorities in a manner that the amount of Rs.10,06,666/- is reimbursed to the petitioners. Therefore, it has become imperative to examine the petitioners' alternative prayer as indicated in prayer `b'. Insofar as this prayer is concerned, the question that arises is whether the petitioner No.1 would have been denied the benefit under the scheme merely because on the date on which she underwent medical treatment, she did not possess a CGHS card / token. This issue is no longer a debatable issue insofar as this court is concerned. It has been settled by various decisions including :-

S.K. Sharma v Union of India : 2002 (64) DRJ 620; and

6. In ***S.K. Sharma*** (supra) this court was confronted, inter alia, with the question of reimbursement of expenses on the ground that the petitioner was not a card holder of the CGHS. Other issues were also raised in that case. However, what is relevant for the present case is that it was held in ***S.K. Sharma*** (supra) that the material factor for the grant of benefit under the CGHS scheme is the status of a person which was that of a retired pensioner and this was not governed by the fact as to whether the petitioner was a card holder of the CGHS scheme or not.

7. In ***V.K. Jagdhari*** (supra), a learned Single Judge of this court had examined the entire legal position and summarized the position as emerging from a discussion of the various decisions of this court. The said position was indicated in paragraph 13 of the decision which, inter alia, recorded that it is the status of a retired employee which leads to his entitlement and it is not governed by his status as a card holder. It was also recorded that if medical treatment is availed, whether the employee is a card holder or not is irrelevant and full reimbursement has to be given. The decision of this court in ***B.R. Mehta v Union of India : 1999(50) DRJ 270 : 1999(79) DLT 388*** was also referred to.

8. In view of these decisions, this court, at the interim stage, passed an order on 12.12.2006 requiring the respondent to reconsider the petitioners' claim and issue an appropriate order within four weeks. The respondent was also directed

to communicate the same to the petitioner directly. It appears that the matter was reconsidered and an order was passed on 15.2.2007. A photo copy of which is handed over by the learned counsel for the petitioner and the same is taken on record. Mr Kait, who appears on behalf of the respondent (Union of India), submits that such an order was passed. In my view, the order has, unfortunately, not proceeded in the right direction. The court, while passing the order dated 12.12.2006, had clearly indicated the view taken by this court consistently in several decisions. Despite this, the order dated 15.2.2007, rejecting the claim of the petitioners, continues evince the same ideology on the part of the respondent which has been negated by this court on several occasions. This can be easily noted by referring to the following portion of the order dated 15.2.2007:-

> "Facilities under CGHS can be availed only from the date from which a card is issued in favour of a person after payment of the requisite charges. For any treatment/expenditure incurred before the acquisition of a card. CGHS facilities cannot be availed and post-facto-facility cannot be claimed under CGHS, without the availability of the card."

9. This approach is clearly contrary to what has been held by this court repeatedly and the consequent order passed on the basis of this requires to be set aside. Accordingly, this writ petition is disposed of with the direction that the impugned order dated 26.6.2006 as well as the order dated 15.2.2007 are set aside. The respondent is directed to process the reimbursement claim of the petitioner No.1 in accordance with the directions given above and the view taken by this court

as also the CGHS scheme. This exercise is to be carried out within two weeks. Insofar as the prayers a, c and d are concerned, the petitioners have not pressed the same at this juncture and liberty is granted to the petitioners to agitate the same, if need be, at an appropriate stage.

Dasti to both the parties.

BADAR DURREZ AHMED
(JUDGE)

February 20, 2007
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